

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3288 OF 2006

1. Shri Mateen Rafique Darbar,)
Age:31 years, Residing at)
Flat No.1101, United Arch,)
Farookh Omerbhoy Lane, Agripada,)
Mumbai 400 008.)
2. M/s. Bellisima)
Proprietor, Mr.Rafique Kasam)
Darbar, Shop No.2, 67/81, Sophai)
Zuber Road, New Nagpada,)
Mumbai 400 008.) ...Applicants

Versus

1. M/s.Louis Vuitton Malletier,)
57/58, Rajgir Chambers,)
Opposite Old Custom House,)
S.B.S.Road, Fort, Mumbai 400 023.)
Authorized Representative of)
M/s.Louis Vuitton Malletier)
2. The State of Maharashtra.) ...Respondents

Shri Parwez A. Siddiqui for the Applicants.

Shri Avesh I.Kayser for the Respondent No.1.

Shri A.S.Shitole, A.P.P for the State.

CORAM : A. S. OKA, J.

DATE : DECEMBER 05, 2006.

ORAL JUDGMENT:

1. Rule. The learned Advocate for the first Respondent waives service. The learned A.P.P waives service for the second Respondent. By consent taken up for hearing.

2. The prayer in this Application is for quashing F.I.R registered with the Marine Drive Police Station, Mumbai. The first Respondent is the first informant who has lodged the F.I.R in her capacity as the authorised representative of M/s.Louis Vuitton Malletier. The F.I.R alleges commission of offence under sections 482, 486, 420 of the Indian Penal Code and sections 103 and 104 of the Trade Mark Act, 1999. The allegation in the F.I.R is as regards unauthorised sale of the goods in four different shops. The allegation against the present Applicants is as regards the alleged offence committed in shop No.2, 67/81, Sophai Zuber Road, New Nagpada, Mumbai.

3. The contention of the Applicants is that the dispute between the Applicants and M/s.Louis Vuitton Malletier has been amicably settled. It is submitted that the settlement has been reduced into writing in the form of a Deed of Settlement a copy of which is annexed as Exhibit "D" to this Application.

4. The first Respondent has filed an affidavit in reply. It is stated in the reply that the first Respondent has been duly authorised as a representative of M/s. Louis Vuitton Malletier. The first Respondent

has admitted that there is a settlement between the Applicants and the first Respondent. Paragraph Nos.9 and 10 of the said affidavit read thus:

"9. In the course of time the Petitioner settled the differences with the Respondent No.1 company by giving an undertaking to Respondent No.1 company which was accepted by the constituted attorney of the Respondent No.1 i.e. Mr.M.S.Bharat for and on behalf of Respondent No.1 company and the photocopy of the undertaking dated 22.03.2005 is annexed and marked as Exhibit-E to the Criminal Application. A photo copy of the said undertaking dated 22.03.2005 is annexed hereto and marked Exhibit 3.

10. On account of the settlement between the Petitioners and the Respondent No.1 company the Petitioners have preferred to file the present Criminal Application by invoking the provisions of Section 482 of the Cr.P.C. for quashing the complaint against them in

case bearing No.64/PW/05
(C.R.No.254/2003) on the file of the
learned Metropolitan Magistrate of the
25th Court at Mazgaon, Mumbai".

In paragraph No.13 the first Respondent has stated
thus:

"13. I say that it is pertinent to note
that the Respondent No.1 company is
fully satisfied with the undertaking
of the Petitioners and the settlement
and the terms of settlement arrived at
between the Petitioner and Respondent
No.1 and thus it is submitted that it
would be just, equitable and proper if
the proceedings before the learned
Magistrate in the said complaint not
continue further against the
Petitioners. Therefore, it is
submitted that for the reasons
aforesaid the said complaint against
the Petitioners pending before the
learned Magistrate of the 25th Court
be ordered to be quashed against the
Petitioners only".

5. The learned counsel for the first Respondent supported the prayer made in this Application. The learned A.P.P pointed out that the F.I.R will have to be quashed only as against the Applicants. It is not in dispute that the charge has not been framed against the Applicants. The learned A.P.P has pointed out that the offences are not compoundable. The prayer in this Application is for invoking jurisdiction of this court under section 482 of the said Code. It is not in dispute that there is a complete settlement between the Applicants and the first Respondent. Considering the nature of the allegations made in the F.I.R against the Applicants, continuation of the criminal proceeding as against the Applicants will cause sheer harassment to the Applicants as well as to the first Respondent.

6. In my view, a case is made out for exercising power under section 482 of the said Code. Hence, I pass the following order:

- (i) The F.I.R bearing C.R.No.254 of 2003 registered with Marine Drive Police Station, Mumbai and the Case No.64/PW/2005 pending in the court of the learned Metropolitan Magistrate at Mazgaon, Mumbai are quashed only in so far as the

Applicants are concerned.

- (ii) By consent of the Applicants and the first Respondent, the goods which are seized in the case from the Applicants shall be handed over to the first Respondent.
- (iii) Parties to act upon an authenticated copy of this order.

JUDGE